



Forestry Riparian Easement Program

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Conserving
Washington's
forested stream sides

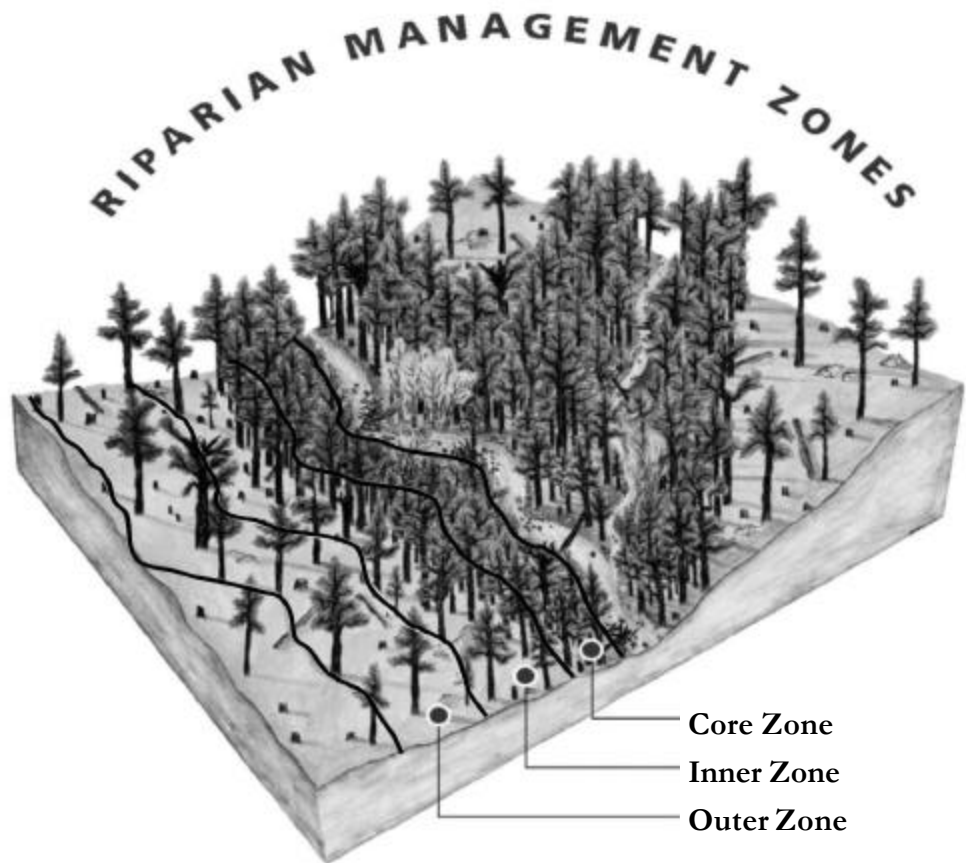


WASHINGTON STATE DEPARTMENT OF
Natural Resources



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The information in this handout is also available on our website at: www.wa.gov/dnr/sflo



Overview

The plant communities that form the transition between land and water comprise a riparian zone that is essential to sustaining wildlife habitat and water quality. This interface between land and water is the most biologically diverse part of a watershed's ecosystem. Riparian processes in the upper watershed directly affect downstream water quality and fish and wildlife habitat. Salmon runs, bird and animal habitat, flood events, irrigation, timber production and recreational activities are all directly affected by activities in riparian zones.

In 1974, the state of Washington began to require forested buffers along streams and rivers to protect water quality and wildlife habitat. The Department of Natural Resources (DNR) was directed to develop and enforce Forest Practices Rules that defined how forested riparian areas are to be managed. To provide protection over the short term, these forested buffers must remain intact. To provide protection over the long term, the riparian forest must be able to regenerate itself.

In 1999, the Washington State Legislature responded to the federal Endangered Species Act listing of several salmon species by authorizing the Forest Practices Board to adopt rules for salmon recovery. These rules increase the size of riparian buffers and create further measures to protect water quality and restore salmon habitat. Recognizing that these rules would have a disproportionate impact on small forest landowners, provisions were included in the legislation to create a Forestry Riparian Easement Program to be managed by a Small Forest Landowner Office within DNR. The easement program acknowledges the importance of small forest landowners and the contributions they make to protect wildlife habitat. The program is also intended to help small forest landowners keep their land in forestry.

DNR's Forestry Riparian Easement Program partially compensates eligible small forest landowners in exchange for a 50-year easement on "qualifying timber." This is the timber the landowner is required to leave unharvested as a result of new forest practices rules protecting Washington's forests and fish. Landowners cannot cut or remove the qualifying timber during the easement period. The landowner still owns the property and retains full access, but has "leased" the trees and their associated riparian function to the state.

**** Important note:***

Some of the provisions in this document may change with the passage of new legislation. Please contact the nearest DNR office for updated information on the Forestry Riparian Easement Program.



Many of these eligibility standards are detailed in the Frequently Asked Questions section of this handout.

Even if you do not qualify for one of the standards listed here, you may still be eligible for the easement program. Please contact your local DNR Region Office if you have any questions.

Qualifying Landowner Checklist

You may qualify for the Forestry Riparian Easement Program if:

1. You own land as an individual or as part of a partnership, corporation, or other nongovernmental legal entity.
Qualify Do not qualify Need more info.
2.
 - a. You own one parcel of more than 20 contiguous acres, OR
 - b. You own a parcel of less than 20 acres as part of a total ownership of multiple parcels in Washington state that together total more than 80 acres.Qualify Do not qualify Need more info.
3. You have timber next to a river, stream, lake, pond or wetland that you plan to harvest in the near future.
Qualify Do not qualify Need more info.
4. Historically, you have not harvested an average of more than 2 million board feet of timber each year from all of your ownerships.
Qualify Do not qualify Need more info.
5. The state has access to the property by foot or vehicle.
Qualify Do not qualify Need more info.
6. There are no hazardous substances, solid waste or other materials that have the potential to adversely affect the easement premises.
Qualify Do not qualify Need more info.
7. You own your property free and clear of any liens, mortgages or other legal encumbrances, OR you can obtain a subordination agreement from your title company.
Qualify Do not qualify Need more info.
8. You are willing to enter into a 50-year agreement with the State of Washington.
Qualify Do not qualify Need more info.



Frequently Asked Questions

What is a Forestry Riparian Easement?

Unlike a typical easement involving property or a road, a forestry riparian easement covers only qualifying timber (those trees which a landowner cannot harvest under the new rules) leased to the state by a small forest landowner. No right of public access or use is created by the easement. The purpose of the easement is to protect the qualifying timber and its associated riparian function. Riparian function includes: stabilizing the stream bank, trapping sediment, shading the water, and providing leaf litter and large woody debris. These functions are dependent upon forest management practices that maintain existing riparian forests. Trees covered by the easement may not be cut or removed for 50 years.

No right of public access is created by the easement.

How much compensation will a landowner receive for timber within the easement area?

Landowners will receive a minimum of 50 percent of the fair market stumpage value for the qualifying timber. The landowner can choose to have the value of his or her timber assessed either on the date the Forest Practices Application is submitted or the date when harvesting begins. There may be some exceptions where more than 50 percent compensation will be offered. Please contact your local Small Forest Landowner Forester for more information on when this may apply.

Landowners will be compensated for 50% of the value of the qualifying timber.

Are there any costs or fees for enrolling in the easement program?

The landowner must initially cover all costs associated with setting up and recording the easement. These costs may include hiring a consulting forester to measure and mark the easement boundaries and/or develop a Forest Stewardship Plan, any filing fees the county requires, any fees charged by a title or mortgage company to obtain real estate documents as well as all business and occupation and real estate excise taxes. However, once the landowner has formally enrolled in the easement program, all of these “compliance” costs will be reimbursed.

The easement will remain in effect for 50 years.

Am I required to allow public access on my property?

No right of public access is conveyed by the easement. However, DNR staff will occasionally visit the site to insure that the terms of the easement are being met.

How long will easements remain in effect?

Easements will remain in effect for 50 years from the date the easement is signed. After 50 years, the current landowner resumes his or her right to the qualifying timber.

Can I withdraw from the easement program once an easement has been established?

No. The Forestry Riparian Easement Program has been developed to provide long-term protection of fish and wildlife habitat and water quality. Landowners may want to seek legal and/or financial advice and family input before entering into the program.

Forestry Riparian Easement Program



A landowner still owns the land & timber, although he or she has “leased” the qualifying timber for 50 years.

If I enter into an easement agreement, do I still own the land & timber?

Yes. Easement participants still own the land and timber although they have “leased” their right to harvest the qualifying timber for 50 years. The easement is intended to protect the riparian functions associated with the qualifying timber, while still preserving other landowner uses. Landowners still have access to the easement site for all uses compatible with terms of that easement. Incompatible land uses may include: cutting any qualifying timber, road building, and waste dumping.

Is there a minimum number of acres I must own in order to qualify for the Forestry Riparian Easement Program?

1. More than 20 contiguous acres. Landowners who own 20 or less contiguous acres do not qualify for the easement program since less restrictive Forest Practices Rules apply to these smaller parcels. If you own less than 20 acres of forestland, there are other incentive programs available from the DNR. Please contact your region DNR Stewardship Forester for more information.
2. **Or**, if you own multiple parcels in Washington state totaling more than 80 acres, a single parcel of 20 acres or less may still be eligible for the easement program.

What areas of my land can I enroll in the Forestry Riparian Easement Program?

The following areas require the protection of forested buffers and therefore will qualify for the easement program: streams, rivers, ponds, lakes, wetlands, seeps, springs, and unstable slopes adjacent to riparian areas.

Am I eligible for the program if I’m not planning to harvest timber?

No. Compensation is only available for qualifying timber that is part of a commercially reasonable harvest unit and covered by a current Forest Practices Application. A harvest unit is considered “commercially reasonable” if its total harvest value equals or exceeds \$1000 **and** the value of the harvestable timber equals or exceeds the value of the qualifying timber. **However**, if you are denied a Forest Practices Application because the majority of your harvest unit is encumbered by buffers, you may still be eligible for the easement program.

If my Forest Practices Application is denied or if I am unable to obtain an application because of site-specific conditions on my property, will I still be eligible for the program?

If you are unable to obtain a Forest Practices Application, or if your Application is denied because of the way the new “Forests and Fish” rules affect your property, you may still be eligible for the easement program. The most common situation where an Application may be denied is where a planned harvest unit has so many streams, wetlands, and other sensitive aquatic sites that the required buffers prevent any timber from being harvested.

What happens if the property is sold or inherited?

If the land associated with the easement is transferred in any manner, the terms of the easement agreement carry forward to the new owner. Landowners are obligated to incorporate the terms of the easement into applicable deeds or other legal documents referencing the easement site.

Forestry Riparian Easement Program



By law, no trees can be harvested within 50 ft. of any fish-bearing stream or river. All trees within this “core zone” qualify for the easement.

Timber surrounding other sensitive sites such as lakes, ponds, seeps, springs, unstable slopes or forested wetlands may also qualify for the easement program.

A landowner must still pay all usual property taxes on the easement premises.

How do landowners know which trees must be left unharvested, and therefore qualify for compensation?

Following passage of the Salmon Recovery Act of 1999, the state has begun to enforce new forested buffer widths for eastern and western Washington. Required buffer widths vary depending on the site class of the land, the management harvest option, the bankfull width of the stream and whether the stream is fish-bearing. For fish-bearing streams in eastern Washington, buffer widths range from 50 to 130 feet. For fish-bearing streams in Western Washington, they range from 90 to 200 feet. Buffers are divided into core, inner and outer zones (see illustration on page 1). **No trees can be harvested within the core zone;** however, some harvesting is allowed in the inner and outer zones. The Forest Practices Forester or the consulting forester assisting you with your harvest will help you determine which trees must be left. Qualifying trees are those trees which must be left within the core, inner and outer zones of the riparian buffer. Non-fish bearing streams also have harvesting restrictions and therefore will have timber that may qualify for the easement program. Please consult the forest practices rules or with your local forest practices forester to determine buffer widths on non-fish bearing streams

Can I be compensated for timber that is not adjacent to a stream or river?

In some cases, yes. This provision pertains to timber located near ponds, lakes, seasonal springs, wetlands, unstable slopes or other sensitive sites. To qualify, however, this timber must still be part of or adjacent to a commercially reasonable harvest unit.

Will the landowner still be responsible for paying taxes on and have other legal or fiscal obligations to the easement?

Yes. Landowners must still pay taxes which apply to the easement and/or qualifying timber. The landowner must keep the premises and timber free of any liens. Landowners also remain responsible for obtaining all legally required permits for activities conducted on or near the easement premises (i.e. hunting, forest practices and irrigation permits).

Landowners will continue to be responsible for paying:

1. State excise tax on harvested timber.
2. Federal income tax on any state compensation the landowner receives for timber covered by the easement.
3. Annual state property taxes.

Can I write an alternate plan for my property, then enroll the trees remaining in the riparian zone in the Forestry Riparian Easement Program?

Yes. A landowner has the option to write an alternate plan for managing timber in a riparian area using prescriptions that differ from the state forest practices rules. If the alternate plan is accepted by the state, the landowner may be able to harvest more timber than is allowed under the current rules. Timber remaining in the riparian area following harvest may then be eligible for compensation under the Forestry Riparian Easement Program. For more information on the alternate planning process, please contact your local Small Forest Landowner Forester.

Forestry Riparian Easement Program



To qualify as a Small Forest Landowner, no more than 2 million board feet of timber can be harvested per year.

To be eligible, the property must be owned free and clear of any mortgages or liens by the landowner.

Is there a limit to the amount of timber I can harvest to be considered a “small” forest landowner and therefore qualify for the easement program?

Yes. Landowners who harvest an average of less than 2 million board feet of timber per year over the past three years and who do not expect to harvest more than 2 million board feet per year over the next ten years qualify as a small forest landowner and are eligible for the Forestry Riparian Easement Program. However, landowners *may* still qualify if they exceeded the two million board feet limit to pay for compelling and unexpected obligations such as court ordered judgments or funeral expenses.

Am I still eligible for the easement program if I have a mortgage or liens on my property?

Perhaps. In order to reduce the state’s liability, the landowner is expected to own their property outright and clear up any liens or other legal encumbrances on the title prior to enrolling in the easement program. However, in the case of a mortgage, if a landowner can obtain a “**subordination agreement**” from their title company, the landowner may be eligible for the easement program. A subordination agreement makes the interests of the mortgage holder “junior” to the interests of the state. In the event of foreclosure, the mortgage company must honor the easement when reselling the property. Without this assurance, DNR cannot grant an easement.

What paperwork or documents am I required to submit when enrolling in the easement program?

Application for the program first begins with the **Forest Practices Application**, which must be submitted to DNR before timber harvest can begin. As part of the Forest Practices Application, the landowner may also be required to submit a **Road Maintenance and Abandonment Plan (RMAP)**. If a landowner is planning to conduct periodic thinning of his/her forest, or any other harvest prescriptions than a clear cut, he/she may be asked to prepare and submit a **Forest Stewardship Plan**. A landowner will need to provide a **title report**. If the landowner has a mortgage on the property, a **subordination agreement** must be obtained from the title company holding the title company responsible for the property and the easement in the event the company forecloses on the property. The landowner will also need to submit a **litigation guarantee** provided by the title company which indicates if the property has liens held against it.

There may be fees associated with obtaining any or all of the documents listed above. The landowner is responsible for covering these costs up-front; however, once the easement has been signed, DNR will reimburse the landowner for all costs incurred in order to obtain the necessary documents for the easement program (except for the forest practices application and the RMAP). Please contact your local small forest landowner forester to determine what paperwork you may be responsible for submitting.

How will DNR’s Small Forest Landowner Office calculate the value of the trees in the riparian easement?

Once the harvest is complete, DNR’s Small Forest Landowner Office will hire a timber cruiser to determine the volume of the remaining qualifying timber. Local standard market values will then be used to determine the fair market value of the timber. The landowner can choose to have this value based on the date the Forest Practices Application was received or the date timber harvesting begins.

Forestry Riparian Easement Program



Can an easement be granted when the land is leased or owned by one party and the trees owned or leased to a different party?

When an easement is established on forestland, it becomes a legal encumbrance on the title and carries forward with the title when the property is sold or otherwise passed on to another landowner. Therefore the landowner is ultimately responsible for establishing the easement on the property. However, if one individual owns the timberland and is leasing or has sold the timber rights to another individual, it is the responsibility of both the landowner and the timber owner/lesser to determine how the compensation for the qualifying timber will be equitably distributed.

When land is entered into the easement program, who is responsible for surveying the property lines and who must pay for the survey?

A legal survey of the easement premises is not required for the purposes of the easement program. However, identification of all property lines is the landowner's responsibility. If the easement premises border a property line, it is recommended that the landowner hire a licensed surveyor to identify the property lines prior to conducting a timber harvest and enrolling in the easement program. A DNR forester will, however, traverse the boundaries of an easement in order to determine the number of acres within the easement. Additionally, if the value of the qualifying timber exceeds \$100,000, DNR will hire a licensed surveyor to establish a benchmark within the easement premises and tie this benchmark to the nearest Public Land Survey Monument.

How will the easement premises be identified and marked for the 50-year term of the easement?

The forested acres within a forestry riparian easement are identified by traversing the boundary of the easement. The landowner, when filing a forest practices application, must include a map of the harvest unit with the riparian management zone marked off. Additionally, when laying out the harvest unit on the ground, the landowner, or a consulting forester hired by the landowner, must flag off the boundaries of the harvest unit as well as the various zones within the riparian management zone. Once the timber harvest has been completed, a DNR small forest landowner forester will traverse the boundary of the easement premises in order to establish an accurate number of acres contained within the easement.



How to Apply

If you still have questions about the Forestry Riparian Easement Program, please contact your nearest DNR office or visit the Small Forest Landowner Office website at: www.wa.gov/dnr/sflo.

1. **Enrollment in the program first begins with the Forest Practices Application, which must be submitted to the DNR before timber harvest can begin.** Landowners can obtain an application from a DNR office or request that one be mailed to them. **On the application, check the box indicating you are interested in the Forestry Riparian Easement Program.** Initially applying to the easement program does not obligate you to participate.
2. A DNR Small Forest Landowner forester will contact you shortly after you submit your Forest Practices Application. The forester will confirm that you and your land are eligible for the program and will set up a time to make a site visit.
3. At your site visit, the Small Forest Landowner forester will confirm that the site meets program criteria and provide initial guidance in determining the geographical boundaries of the proposed easement area.
4. Either the landowner or a consulting forester hired by the landowner measures and marks the physical boundaries of the easement site and physically tags those trees to be designated as “qualifying timber” for which compensation will be requested.
5. The landowner conducts the planned timber harvest following approval of their Forest Practices Application. Trees tagged as “qualifying timber” are not cut. **If a landowner cannot get an approved Application due to the way the new rules affect harvesting near water on his or her property, the Small Forest Landowner Office may still deem the landowner eligible for the program.**
6. The landowner notifies DNR that their harvest has been completed. A DNR forester will then re-visit the site and confirm compliance with Forest Practices Rules requiring leave trees in the easement area. DNR will notify the landowner of any variance from the rules.
7. The landowner completes a short Harvest Status Questionnaire and submits it to the Small Forest Landowner forester who has been assisting them.
8. The Small Forest Landowner Office will arrange and pay for a cruise of the qualifying timber, value the timber, calculate compensation, and make an offer to the landowner.
9. If the landowner disagrees with the compensation offer, he or she has 30 days after the date of the compensation decision to submit a written request for review. The Office will issue a written response within 30 days.
10. If agreement is reached on compensation, the easement papers will be drawn and the Small Forest Landowner Office and the landowner will sign the easement agreement. Payment will be made promptly upon completion of the contract.



DNR Regions

For more information:

Please contact the Small Forest Landowner forester at the nearest DNR region office.

Olympia Headquarters

P.O. Box 47012
Olympia, WA 98504-7012
Tel: (360) 902-1389
Fax: (360) 902-1428
TTY: (360) 902-1125
sflo@wadnr.gov
www.wa.gov/dnr/sflo

Central Region

Rick Kuykendall
1405 Rush Rd.
Chehalis, WA 98532-8763
Tel: (360) 767-7002
TTY: (360) 740-6804
rick.kuykendall@wadnr.gov

Northwest Region

Boyd Norton
919 N Township St.
Sedro-Wooley, WA 98284-9333
Tel: (360) 856-3500
TTY: (360) 856-1371
boyd.norton@wadnr.gov

Northeast Region

Steve DeCook
225 S. Silke Rd.
P.O. Box 190
Colville, WA 99114
Tel: (509) 684-7474
TTY: (509) 684-7474
steve.decook@wadnr.gov

Olympic Region

Ritch Wood
411 Tillicum Lane
Forks, WA 98331-9797
Tel: (360) 374-6131
TTY: (360) 374-2819
richard.wood@wadnr.gov

Southeast Region

Joe Weeks
713 E Bowers Rd.
Ellensburg, WA 98926-9341
Tel: (509) 925-8510
TTY: (509) 925-8527
joe.weeks@wadnr.gov

Southwest Region

Mary McDonald
601 Bond Rd.
P.O. Box 280
Castle Rock, WA 98611-0280
Tel: (360) 577-2025
TTY: (360) 577-2025
mary.mcdonald@wadnr.gov

South Puget Sound Region

King County: Boyd Norton
Pierce County: Rick Kuykendall
Kitsap County: Ritch Wood
Mason County: Ritch Wood
950 Farman St. N.
P.O. Box 68
Enumclaw, WA 98022-0068
Tel: (360) 825-1631
TTY: (360) 825-6381

1111 WASHINGTON ST SE
PO BOX 47012
OLYMPIA, WA 98504 - 7012

WASHINGTON STATE DEPARTMENT OF
Natural Resources
Doug Sutherland - Commissioner of Public Lands

